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 6 and PACIFIC BELL TELEPHONE COMPANY  
 7

8 **UNITED STATES DISTRICT COURT**  
 9 **NORTHERN DISTRICT OF CALIFORNIA**

11 LILLIAN MUNSON, an individual,

13 Plaintiff,

14 v.

15 AT&T, a Delaware corporation, PACIFIC  
 16 BELL TELEPHONE COMPANY, and DOES  
 17 1-50,

18 Defendants.

Case No.: CV 07-06470 WHA

**DEFENDANT AT&T CORP.'S ANSWER  
 TO PLAINTIFF'S FIRST AMENDED  
 COMPLAINT**

20 Defendant AT&T CORP. (hereafter "Defendant"), erroneously sued herein as  
 21 AT&T, a Delaware corporation, hereby answers Plaintiff LILLIAN MUNSON's First Amended  
 22 Complaint, filed by Plaintiff in the Superior Court in and for the County of Alameda on  
 23 November 21, 2007 (hereafter "Complaint"), as follows:

25 Defendant generally denies each and every allegation in the Complaint, except  
 26 those expressly admitted below.

1           1. Answering Paragraph 1 of Plaintiff's Complaint, Defendant<sup>1</sup> admits that  
 2 Pacific Bell Telephone Company ("Pacific Bell") employed Plaintiff for some period of time  
 3 and that Pacific Bell terminated Plaintiff's employment. Defendant is without sufficient  
 4 knowledge and information regarding whether Pacific Bell employed Plaintiff in San  
 5 Francisco and on that basis, denies that allegation.<sup>2</sup> Except as expressly admitted herein,  
 6 Defendant denies each and every allegation contained in Paragraph 1.

7

8           2. Answering Paragraph 2 of Plaintiff's Complaint, Defendant admits that  
 9 Plaintiff is an African American female individual and that Pacific Bell employed Plaintiff from  
 10 approximately 1987 until 2006. Defendant further admits that Plaintiff worked as an  
 11 Operator from 1987 to 1996, and that Plaintiff worked as a Service Representative from  
 12 1996 to 2006. Except as expressly admitted herein, Defendant denies each and every  
 13 allegation contained in Paragraph 2.

14

15           3. Answering Paragraph 3 of Plaintiff's Complaint, Defendant admits that  
 16 AT&T Corp. is a telecommunications holding company, and that Pacific Bell is a  
 17 telecommunications services company. Defendant further admits that it has employees  
 18 working in San Francisco, and that Pacific Bell is a California corporation which does  
 19 business in San Francisco, California. Except as expressly admitted herein, Defendant  
 20 denies each and every allegation contained in Paragraph 3.

21

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22           <sup>1</sup> Defendant AT&T Corp., formerly known as American Telephone and Telegraph, was  
 23 incorporated on March 3, 1885 in New York. AT&T Corp. is a separate business entity from  
 24 Pacific Bell Telephone Company. AT&T Corp. is not, and never has been, the parent entity  
 of Pacific Bell. Furthermore, AT&T Corp. has never employed Plaintiff and has no  
 relationship to Plaintiff or the events underlying her allegations.

25

26           <sup>2</sup> On December 21, 2007, prior to removing this action to federal court, Defendant AT&T  
 27 Corp. filed a Motion to Transfer Venue in state court which indicated that Plaintiff had  
 worked in San Francisco from 2000 to November of 2005. Subsequent to that filing,  
 Defendant has learned new facts that call into question that assertion. Although that Motion  
 to Transfer Venue is now off calendar given the removal of this action to federal court, these  
 28 new facts do not impact the underlying Motion.

1                  4. Answering Paragraph 4 of Plaintiff's Complaint, Defendant is without  
2 sufficient knowledge and information regarding Plaintiff's claims to form a belief as to the  
3 truth of the allegations contained in this paragraph, and on that basis denies each and every  
4 allegation contained in Paragraph 4.

5  
6                  5. Answering Paragraph 5 of Plaintiff's Complaint, Defendant denies that  
7 any individual defendants have been named in this action. Defendant denies each and  
8 every allegation contained in Paragraph 5.

9  
10                6. Answering Paragraph 6 of Plaintiff's Complaint, Defendant admits that  
11 Plaintiff was employed by Pacific Bell for approximately 19 years. Except as expressly  
12 admitted herein, Defendant denies each and every allegation contained in Paragraph 6.

13  
14                7. Answering Paragraph 7 of Plaintiff's Complaint, Defendant admits that  
15 Plaintiff began working for Pacific Bell in 1987. Defendant admits that in 1987, Plaintiff  
16 worked for Pacific Bell as an Operator, and Defendant further admits that at some point prior  
17 to 1996, Plaintiff worked for Pacific Bell as an Operator at Pacific Bell's San Leandro facility.  
18 Defendant admits Pacific Bell operated an office located at 2150 Webster St., Oakland,  
19 California, and that Plaintiff worked there between 1996 and 1998 as a Service  
20 Representative. Defendant admits that Pacific Bell had an office at Bishop Ranch in San  
21 Ramon, California in 1998, and that Plaintiff worked for Pacific Bell as a Service  
22 Representative at that location beginning in 1998. Defendant also admits that Plaintiff  
23 worked for Pacific Bell until notified of her termination on July 7, 2006. Otherwise, after a  
24 diligent inquiry and exerting reasonable effort, Defendant has determined that, due to the  
25 passage of time and changes of personnel during that interval, Defendant is without  
26 sufficient knowledge and information regarding these claims to form a belief as to the truth  
27 of any other allegations contained therein. Except as expressly admitted herein, Defendant  
28 denies each and every allegation contained in Paragraph 7.

1           8. Answering Paragraph 8 of Plaintiff's Complaint, after a diligent inquiry  
2 and exerting reasonable effort, Defendant has determined that, due to the passage of time  
3 and changes of personnel during that interval, Defendant is without sufficient knowledge  
4 and information regarding Plaintiff's claims to form a belief as to the truth of the allegations  
5 contained therein. Defendant denies each and every allegation contained in Paragraph 8.

6  
7           9. Answering Paragraph 9 of Plaintiff's Complaint, Defendant is without  
8 sufficient knowledge and information regarding Plaintiff's claims to form a belief as to the  
9 truth of the allegations contained therein. Defendant denies each and every allegation  
10 contained in Paragraph 9.

11  
12          10. Answering Paragraph 10 of Plaintiff's Complaint, after a diligent inquiry  
13 and exerting reasonable effort, Defendant has determined that, due to the passage of time  
14 and changes of personnel during that interval, Defendant is without sufficient knowledge  
15 and information regarding Plaintiff's claims as to the number of employees in San Leandro  
16 at the time or whether other employees underwent surgery due to physical conditions to  
17 form a belief as to the truth of the allegations contained therein, and on that basis denies  
18 those allegations. Defendant denies each and every other allegation contained in  
19 Paragraph 10.

20  
21          11. Answering Paragraph 11 of Plaintiff's Complaint, Defendant is without  
22 sufficient knowledge and information regarding Plaintiff's claim that she did not wear her  
23 prescribed wristbands because she did not want to be labeled as "faking" her physical  
24 condition to form a belief as to the truth of the allegations contained therein, and on that  
25 basis denies each and every such allegation. Further, after a diligent inquiry and exerting  
26 reasonable effort, Defendant has determined that, due to the passage of time and changes  
27 of personnel during that interval, Defendant is without sufficient knowledge and information  
28 regarding Plaintiff's other claims in this paragraph to form a belief as to the truth of the

1 allegations contained therein. Defendant denies each and every allegation contained in  
2 Paragraph 11.

3  
4 12. Answering Paragraph 12 of Plaintiff's Complaint, Defendant admits that  
5 Plaintiff was counseled on multiple occasions during her employment with Pacific Bell  
6 relating to compliance with Pacific Bell's attendance standards, but denies that Pacific Bell  
7 allowed a maximum of three absences per year. Further, Plaintiff's claim that she was  
8 "counseled bi-monthly," is so vague and ambiguous that Defendant cannot in good faith  
9 respond. Except as expressly admitted herein, Defendant denies each and every allegation  
10 contained in Paragraph 12.

11  
12 13. Answering Paragraph 13 of Plaintiff's Complaint, Defendant admits that  
13 Plaintiff began working as a Service Representative for Pacific Bell in Oakland, California in  
14 1996. Defendant further admits that during some portion of Plaintiff's time working in this  
15 position, both Christopher Thomas and Brenda Saucer served as Plaintiff's managers.  
16 Defendant denies that Thomas and Saucer were Munson's only managers during this  
17 period, or that they were her managers at the same time. Otherwise, after a diligent inquiry  
18 and exerting reasonable effort, Defendant has determined that, due to the passage of time  
19 and changes of personnel during that interval, Defendant is without sufficient knowledge  
20 and information regarding Plaintiff's claims in this paragraph to form a belief as to the truth  
21 of the allegations contained therein. Except as expressly admitted herein, Defendant  
22 denies each and every allegation contained in Paragraph 13.

23  
24 14. Answering Paragraph 14 of Plaintiff's Complaint, Defendant admits that  
25 in 1998 Plaintiff began working as a Service Representative for Pacific Bell in San Ramon,  
26 California, and that Mark Sullivan was her second-level manager. Defendant does not deny  
27 that Plaintiff was provided with an ergonomic chair and desk as alleged in this paragraph.  
28 Due to the passage of time and changes of personnel during that interval, Defendant is

1 without sufficient knowledge and information to form a belief as to the truth of the other  
2 allegations contained in this paragraph. Except as expressly stated herein, Defendant  
3 denies each and every allegation contained in Paragraph 14.

4

5       15. Answering Paragraph 15 of Plaintiff's Complaint, Defendant is without  
6 sufficient knowledge and information regarding Plaintiff's claim that she suffered increasing  
7 pain while working at San Ramon, California to form a belief as to the truth of the allegations  
8 contained therein, and on that basis denies each and every such allegation. Defendant  
9 admits that during Plaintiff's time working in San Ramon between 1998 and 2000, Pacific  
10 Bell counseled her on multiple occasions relating to compliance with Pacific Bell's  
11 attendance standards. Except as expressly admitted herein, Defendant denies each and  
12 every allegation contained in Paragraph 15.

13

14       16. Answering Paragraph 16 of Plaintiff's Complaint, due to the passage of  
15 time and changes of personnel during that interval, Defendant is without sufficient  
16 knowledge and information to form a belief as to the truth of whether and when Plaintiff took  
17 the business service representative examination while employed by Pacific Bell and who  
18 administered that examination. Defendant denies each and every allegation contained in  
19 Paragraph 16.

20

21       17. Answering Paragraph 17 of Plaintiff's Complaint, Defendant is without  
22 sufficient knowledge and information regarding Plaintiff's claim that her pain persisted and  
23 increased after 2000 to form a belief as to the truth of the allegations contained therein, and  
24 on that basis denies each and every such allegation. Defendant admits that Plaintiff was  
25 absent on multiple occasions from work with Pacific Bell after 2000, and that Plaintiff  
26 informed Pacific Bell that the reason for some absences was problems with her back.  
27 Except as expressly admitted herein, Defendant denies each and every allegation contained  
28 in Paragraph 17.

1                   18. Answering Paragraph 18 of Plaintiff's Complaint, Defendant admits that  
2 in 2000, Plaintiff attributed several days of absence from her work for Pacific Bell to  
3 attending a family funeral in Kansas. Except as expressly admitted herein, Defendant  
4 denies each and every allegation contained in Paragraph 18.

5  
6                   19. Answering Paragraph 19 of Plaintiff's Complaint, Defendant admits that  
7 in 2001 Plaintiff began working in Pacific Bell's ISDN Provisioning and Maintenance  
8 department (incorrectly referred to as the "Testing Department") as a Service  
9 Representative, and that Bruce Shea (incorrectly referred to as "Bruce O'Shea") was  
10 Plaintiff's second-level manager while she worked in that department. Except as expressly  
11 admitted herein, Defendant denies each and every allegation contained in Paragraph 19.

12  
13                  20. Answering Paragraph 20 of Plaintiff's Complaint, Defendant admits that  
14 at some time during late-2003 or early-2004, Plaintiff transferred within Pacific Bell to a  
15 Service Representative position in San Ramon for which Mark Sullivan was the second-  
16 level manager. Defendant further admits that during the period relevant to these  
17 allegations, Plaintiff's workstation was ergonomically evaluated and adjusted. Further,  
18 Defendant does not dispute Plaintiff's claim that she did not request any accommodation  
19 during training sessions. Otherwise, due to the passage of time and changes of personnel  
20 during that interval, Defendant is without sufficient knowledge and information to form a  
21 belief as to the truth of the other allegations contained in these claims. Except as expressly  
22 admitted herein, Defendant denies each and every allegation contained in Paragraph 20.

23  
24                  21. Answering Paragraph 21 of Plaintiff's Complaint, Plaintiff's claim that  
25 Defendant was undergoing "financial changes" in approximately 2003 to 2004 is so vague  
26 and ambiguous that Defendant cannot in good faith respond and on that basis denies the  
27 allegation. Defendant admits that in 2003, while Plaintiff was working in Pacific Bell's ISDN  
28 Provisioning and Maintenance department, her position as a Service Representative was

1 relocated to Pasadena, California. Further, Plaintiff's claim that positions of her co-workers  
2 were eliminated is so vague and ambiguous that Defendant cannot in good faith respond.  
3 Except as expressly admitted herein, Defendant denies each and every allegation contained  
4 in Paragraph 21.

5

6           22. Answering Paragraph 22 of Plaintiff's Complaint, Defendant admits that  
7 Charlene Nakagaki suspended Plaintiff's employment with Pacific Bell pending an  
8 investigation into the circumstances and extent of Plaintiff's unauthorized access of her own  
9 telephone account in its Billing Order and Support System. Defendant further admits that  
10 Charlene Nakagaki met with Plaintiff on July 7, 2006, and at that time, Plaintiff was informed  
11 that her employment with Pacific Bell was terminated. Defendant further admits that Joan  
12 Goodman (incorrectly referred to as "Joan Clayton") was at that meeting. Except as  
13 expressly admitted herein, Defendant denies each and every allegation contained in  
14 Paragraph 22.

15

16           23. Answering Paragraph 23 of Plaintiff's Complaint, Defendant admits that  
17 Plaintiff informed Pacific Bell at various times during her employment that she suffered from  
18 ongoing health problems, including but not limited to a chronic back condition. Defendant  
19 admits that Plaintiff informed Pacific Bell at various times during her employment that she  
20 sought treatment for alleged health problems, including doctor visits, chiropractor treatment  
21 and physical therapy. Defendant also admits that Plaintiff took several medical leaves  
22 approved under the Family Medical Leave Act ("FMLA") during her employment with Pacific  
23 Bell. As to Plaintiff's claims that her pain increased and she developed a chronic back  
24 condition and tendonitis, Defendant is without sufficient knowledge and information to form  
25 a belief as to the truth of those allegations, and on that basis denies those allegations.  
26 Except as expressly admitted or otherwise denied herein, Defendant denies each and every  
27 allegation contained in Paragraph 23.

28

1           24. Answering Paragraph 24 of Plaintiff's Complaint, Defendant admits that  
2 Pacific Bell was aware that doctors prescribed medication for Plaintiff's ongoing health  
3 problems. Defendant is otherwise without sufficient knowledge and information regarding  
4 Plaintiff's claims to form a belief as to the truth of the allegations contained therein. Except  
5 as expressly admitted herein, Defendant denies each and every allegation contained in  
6 Paragraph 24.

7

8           **FIRST CAUSE OF ACTION**

9           **(Race Discrimination – Cal. Govt. Code § 12940)**

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11           25. Answering Paragraph 25 of Plaintiff's Complaint, Defendant  
12 incorporates by reference its responses to Paragraphs 1 through 24, above.

13

14           26. Answering Paragraph 26 of Plaintiff's Complaint, Defendant denies  
15 each and every allegation contained therein.

16

17           27. Answering Paragraph 27 of Plaintiff's Complaint, Defendant denies  
18 each and every allegation contained therein.

19

20           28. Answering Paragraph 28 of Plaintiff's Complaint, Defendant denies  
21 each and every allegation contained therein.

22

23           29. Answering Paragraph 29, Defendant denies each and every allegation  
24 contained therein.

25

26           30. Answering Paragraph 30, Defendant denies each and every allegation  
27 contained therein.

28

## **SECOND CAUSE OF ACTION**

**(Discrimination Based Upon Physical Disability – Cal. Govt. Code § 12940)**

31. Answering Paragraph 31 of Plaintiff's Complaint, Defendant incorporates by reference its responses to Paragraphs 1 through 30, above.

32. Answering Paragraph 32 of Plaintiff's Complaint, Defendant denies each and every allegation contained therein.

33. Answering Paragraph 33 of Plaintiff's Complaint, Defendant denies each and every allegation contained therein.

34. Answering Paragraph 34 of Plaintiff's Complaint, Defendant denies each and every allegation contained therein.

35. Answering Paragraph 35 of Plaintiff's Complaint, Defendant denies each and every allegation contained therein.

## **THIRD CAUSE OF ACTION**

## **(Discrimination Based On Retaliation – Cal. Govt. Code § 12940)**

36. Answering Paragraph 36 of Plaintiff's Complaint, Defendant incorporates by reference its responses to Paragraphs 1 through 35, above.

37. Answering Paragraph 37 of Plaintiff's Complaint, Defendant denies each and every allegation contained therein.

1           38. Answering Paragraph 38 of Plaintiff's Complaint, Defendant denies  
2 each and every allegation contained therein.

3           39. Answering Paragraph 39 of Plaintiff's Complaint, Defendant denies  
4 each and every allegation contained therein.

5           40. Answering Paragraph 40 of Plaintiff's Complaint, Defendant denies  
6 each and every allegation contained therein.

7           41. Answering Paragraph 41 of Plaintiff's Complaint, Defendant denies  
8 each and every allegation contained therein.

9           42. Answering Paragraph 42 of Plaintiff's Complaint, Defendant admits that,  
10 in or about November 2006, Plaintiff filed a charge of discrimination with the Equal  
11 Employment Opportunity Commission and the California Department of Fair Employment  
12 and Housing. Except as expressly admitted herein, Defendant is without sufficient  
13 knowledge and information regarding Plaintiff's claims to form a belief as to the truth of the  
14 allegations contained in this paragraph. Except as expressly admitted, Defendant denies  
15 each and every allegation contained in Paragraph 42.

16           43. Answering Paragraph 43 of Plaintiff's Complaint, Defendant denies  
17 each and every allegation contained therein.

18           **FOURTH CAUSE OF ACTION**

19           **(Intentional Infliction of Emotional Distress)**

20           44. Answering Paragraph 44 of Plaintiff's Complaint, Defendant  
21 incorporates by reference its responses to Paragraphs 1 through 43, above.

1           45. Answering Paragraph 45 of Plaintiff's Complaint, Defendant denies  
 2 each and every allegation contained therein.

4           46. Answering Paragraph 46 of Plaintiff's Complaint, Defendant denies  
 5 each and every allegation contained therein.

7           47. Answering Paragraph 47 of Plaintiff's Complaint, Defendant denies  
 8 each and every allegation contained therein.

10          48. Answering Paragraph 48 of Plaintiff's Complaint, Defendant denies  
 11 each and every allegation contained therein.

13           **FIFTH CAUSE OF ACTION**

14           **(Breach of Contract)**

16          49. Answering Paragraph 49 of Plaintiff's Complaint, Defendant  
 17 incorporates by reference its responses to Paragraphs 1 through 48, above.

19          50. Answering Paragraph 50 of Plaintiff's Complaint, Defendant admits that  
 20 the Collective Bargaining Agreement ("CBA") between Pacific Bell and the Communications  
 21 Workers of America ("CWA"), of which Plaintiff was a member, imposed certain obligations  
 22 on Pacific Bell. Except as expressly admitted, Defendant denies each and every allegation  
 23 contained in Paragraph 50.

25          51. Answering Paragraph 51 of Plaintiff's Complaint, Defendant denies  
 26 each and every allegation contained therein.

1           52. Answering Paragraph 52 of Plaintiff's Complaint, Defendant denies  
 2 each and every allegation contained therein.

3

4           **SIXTH CAUSE OF ACTION**

5           **(Breach of Implied Covenant of Good Faith and Fair Dealing)**

6

7           53. Answering Paragraph 53 of Plaintiff's Complaint, Defendant  
 8 incorporates by reference its responses to Paragraphs 1 through 52, above.

9

10          54. Answering Paragraph 54 of Plaintiff's Complaint, Defendant admits that  
 11 the Collective Bargaining Agreement ("CBA") between Pacific Bell and the Communications  
 12 Workers of America ("CWA"), of which Plaintiff was a member, imposed certain obligations  
 13 on Pacific Bell which are set forth in that CBA. Except as expressly admitted, Defendant  
 14 denies each and every allegation contained in Paragraph 54.

15

16          55. Answering Paragraph 55 of Plaintiff's Complaint, Defendant denies  
 17 each and every allegation contained therein.

18

19          56. Answering Paragraph 56 of Plaintiff's Complaint, Defendant denies  
 20 each and every allegation contained therein.

21

22          57. Answering Paragraph 57 of Plaintiff's Complaint, Defendant denies  
 23 each and every allegation contained therein.

24          / / /

25          / / /

26          / / /

27          / / /

28          / / /

## **SEVENTH CAUSE OF ACTION**

## **(Wrongful Termination in Violation of Public Policy)**

58. Answering Paragraph 58 of Plaintiff's Complaint, Defendant incorporates by reference its responses to Paragraphs 1 through 57, above.

59. Answering Paragraph 59 of Plaintiff's Complaint, Defendant denies each and every allegation contained therein.

60. Answering Paragraph 60 of Plaintiff's Complaint, Defendant denies each and every allegation contained therein.

61. Answering Paragraph 61 of Plaintiff's Complaint, Defendant denies each and every allegation contained therein.

## PRAYER FOR RELIEF

62. Defendant denies the allegations contained in Paragraphs 1 to 7 of Plaintiff's prayer for relief, and denies that Plaintiff was injured or damaged in any sum, or at all.

## AFFIRMATIVE DEFENSES

For and as a separate and affirmative defense to each and every claim for relief set forth in the Complaint, Defendant alleges as follows:

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## **FIRST AFFIRMATIVE DEFENSE**

## **(Failure to State a Claim)**

63. Plaintiff's Complaint fails to allege facts sufficient to state a claim upon which relief can be granted.

## **SECOND AFFIRMATIVE DEFENSE**

## **(Statute of Limitations)**

64. Plaintiff's claims are barred by the applicable statutes of limitations including, but not limited to, those limitations set forth in California Code of Civil Procedure section 335.1, 337, 339, California Government Code sections 12960 and 12965(b), and those applicable to the Labor Management Relations Act – see *Audette v. International Longshoremen's and Warehousemen's Union* (9th Cir. 1999) 195 F.3d 1107, 1111 (as well as any other statutes that might include applicable time bars).

## THIRD AFFIRMATIVE DEFENSE

## **(Exhaustion of Administrative Remedies)**

65. Plaintiff has failed to exhaust her administrative remedies, the exhaustion of which is a condition precedent to the maintenance of her First, Second and Third Causes of Action.

#### FOURTH AFFIRMATIVE DEFENSE

### **(Subject Matter Jurisdiction)**

66. The Court lacks subject matter jurisdiction over any discrimination, harassment and/or retaliation claims and allegations on which Plaintiff bases her First

1 Second and Third Causes of Action which are not contained in a timely administrative  
 2 charge filed by Plaintiff with the California Department of Fair Employment and Housing.  
 3

4 **FIFTH AFFIRMATIVE DEFENSE**

5 **(Good Faith / Legitimate Business Reasons)**

6  
 7 67. All employment decisions made by Defendant that affected Plaintiff  
 8 were made without malice, in good faith and for legitimate business reasons.  
 9

10 **SIXTH AFFIRMATIVE DEFENSE**

11 **(Waiver and Estoppel)**

12  
 13 68. Plaintiff, by her acts and omissions, has waived and is estopped and  
 14 barred from alleging the matters set forth in the Complaint.  
 15

16 **SEVENTH AFFIRMATIVE DEFENSE**

17 **(Doctrine of Unclean Hands)**

18  
 19 69. Defendant alleges that Plaintiff is barred from any relief by the doctrine  
 20 of unclean hands.  
 21

22 **EIGHTH AFFIRMATIVE DEFENSE**

23 **(Laches)**

24  
 25 70. Plaintiff's Complaint should be barred by the doctrine of laches because  
 26 Plaintiff has unreasonably delayed in bringing her action against Defendant.  
 27  
 28

## NINTH AFFIRMATIVE DEFENSE

## **(Consent)**

71. Any recovery on Plaintiff's Complaint, or on any purported cause of action alleged therein, is barred to the extent that Plaintiff consented to any of the activities and/or conduct alleged therein.

## **TENTH AFFIRMATIVE DEFENSE**

### **(No Proximate Cause)**

72. If Plaintiff has suffered any physical and/or emotional injury, such physical and/or emotional injury was not proximately caused by her employment with Pacific Bell or by the actions of Defendant or anyone acting on Defendant's behalf.

## **ELEVENTH AFFIRMATIVE DEFENSE**

## **(Workers' Compensation Preemption)**

73. If Plaintiff has suffered physical and/or emotional injury related to her employment with Pacific Bell, as alleged in her First through Fourth and Seventh Causes of Action, her exclusive remedy for such injury is provided by California Labor Code section 3200, *et. seq.*

## **TWELFTH AFFIRMATIVE DEFENSE**

## **(Failure to Mitigate)**

74. Plaintiff has failed to mitigate damages alleged in the Complaint.

## THIRTEENTH AFFIRMATIVE DEFENSE

## (After Acquired Evidence)

75. Any recovery on Plaintiff's Complaint, or any purported cause of action alleged therein, is barred to the extent that the Defendant has discovered, or will discover, additional evidence indicating that Plaintiff has engaged in conduct before or while employed by Pacific Bell that precludes or limits her assertion of the claims for relief and/or damages presented therein.

## FOURTEENTH AFFIRMATIVE DEFENSE

## **(Avoidable Consequences)**

76. Plaintiff is barred from any recovery because Defendant Pacific Bell had in place and implemented, in good faith, policies, procedures and other measures that reasonably should have prevented the discrimination, harassment and retaliation she alleges, and Plaintiff unreasonably failed to invoke those measures or take other corrective actions to stop the alleged discrimination, harassment and retaliation.

## FIFTEENTH AFFIRMATIVE DEFENSE

### **(Defendant's Appropriate Corrective Action)**

77. Plaintiff is barred from any recovery because Defendant Pacific Bell took immediate and appropriate corrective action when it became aware of the conduct alleged by Plaintiff.

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**SIXTEENTH AFFIRMATIVE DEFENSE****(Failure to State a Claim – Punitive Damages)**

4           78. Plaintiff's Complaint fails to state a claim sufficient to sustain an award  
 5 of punitive damages.

**SEVENTEENTH AFFIRMATIVE DEFENSE****(Plaintiff Not Entitled to Punitive Damages)**

10           79. Defendant cannot be held liable for punitive damages because, at the  
 11 time of the alleged acts giving rise to Plaintiff's claim for punitive damages, Defendant and  
 12 Pacific Bell had implemented one or more policies prohibiting the alleged acts and/or  
 13 otherwise made good faith efforts to comply with applicable law.

**EIGHTEENTH AFFIRMATIVE DEFENSE****(Vexatious Claim)**

18           80. Plaintiff's maintenance of this action is without foundation, vexatious,  
 19 and unreasonable, entitling Defendant to an award of attorneys' fees in the matter.

**NINETEENTH AFFIRMATIVE DEFENSE****(Subject Matter Jurisdiction & LMRA/NLRA Preemption)**

24           81. Plaintiff's Fifth and Sixth Causes of Action are preempted by the Labor  
 25 Management Relations Act, 29 U.S.C. § 185, *et seq.*, as well as by the National Labor  
 26 Relations Act.

1 **TWENTIETH AFFIRMATIVE DEFENSE**2 **(Causation)**3  
4 82. Plaintiff's negligence with respect to the matters alleged in the  
5 Complaint proximately caused or contributed to the damages Plaintiff claims herein. Such  
6 negligence totally or proportionality offsets any potential recovery by Plaintiff.7  
8 Defendant has not yet completed a thorough investigation and study or  
9 completed discovery of all facts and circumstances of the subject matter of the Complaint,  
10 and, accordingly, reserves the right to amend, modify, revise or supplement this Answer,  
11 and to plead such further defenses and take such further actions as it may deem proper  
12 and necessary in its defense upon the completion of said investigation and study.13  
14 THEREFORE, Defendant demands judgment in its favor, costs of suit, and  
15 attorneys' fees, and all other proper relief.

16 Dated: January 14, 2008

17 MILLER LAW GROUP  
A Professional Corporation

18 By: \_\_\_\_\_ /S/

19 Janine S. Simerly  
20 Attorneys for Defendant AT&T CORP. and  
21 PACIFIC BELL TELEPHONE COMPANY